

Message Text

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PAGE 01 OTTAWA 01510 242311Z

65-61

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LONDON FOR WALDMANN AND O'NEILL

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SUBJ: TAX QUESTION AND BORDER TV STATIONS - ACTION
MESSAGE

REF: OTTAWA 1441 AND 1422 (NOTAL)

1. BEGIN SUMMARY. WITH INTRODUCTION OF GOC INCOME TAX
LEGISLATION ON APRIL 18 THE DIE IS CAST WITH RESPECT TO
UNDERMINING CANADIAN ECONOMIC BASE OF U.S. BORDER TV
STATIONS. THERE IS ALMOST NO CHANCE GOC WILL RETRACT
FROM PRINCIPLE OF NEW LEGISLATION BUT THERE MAY BE
POSSIBILITY IT WOULD BE WILLING TO SHOW SOME FLEXIBILITY
IN IMPLEMENTATION. CONSEQUENTLY, EMBASSY BELIEVES TIME
HAS COME FOR BORDER STATIONS TO ATTEMPT MAKE PEACE WITH
GOC AND SEEK ARRANGEMENT WHICH WILL AVOID ABRUPT
TERMINATION OF STATIONS' CANADIAN REVENUES. IN THIS
TELEGRAM EMBASSY SUGGESTS DEPARTMENT CONSIDER DISCUSSING
WITH INDUSTRY A POSSIBLE STRATEGY--INVOLVING GRADUAL
PHASE-OUT OF TAX DEDUCTION PRIVILEGES AFTER EFFECTIVE
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PAGE 02 OTTAWA 01510 242311Z

DATE OF NEW LEGISLATION. IF AGREED THAT THIS COURSE

IS DESIRABLE, EMBASSY WOULD PROVIDE APPROPRIATE DIPLOMATIC SUPPORT. END SUMMARY.

2. GOVERNMENT BILL C-58 WILL AMEND THE INCOME TAX ACT TO PROVIDE NON-DEDUCTIBILITY OF COSTS INCURRED BY CANADIAN ENTERPRISES FOR ADVERTISING IN TIME AND READER'S DIGEST AS WELL AS ON FOREIGN BROADCASTING UNDERTAKINGS. ASSUMING IT IS PASSED SHORTLY IN PRESENT FORM, IT WOULD COME INTO EFFECT FOR PERIODICALS ON JANUARY 1, 1976 AND, FOR BROADCASTING, ON "A DAY TO BE FIXED BY PROCLAMATION." EMBASSY SUGGESTS DEPARTMENT CONSIDER INITIATING DISCUSSION WITH BUFFALO AND OTHER U.S. STATIONS ON THE FOLLOWING BASIS:

(A) THE DETERMINATION OF GOC TO END PENETRATION OF THE CANADIAN ADVERTISER MARKET BY FOREIGN BROADCASTERS IS CLEAR AND GOC IS UNLIKELY TO BE DETERRED FROM USING EITHER OR BOTH TAX AND CABLE REGULATORY TOOLS.

(B) THE U.S. STATIONS SHOULD ATTEMPT TO PERSUADE GOC, WHILE THERE MAY STILL BE TIME, TO IMPLEMENT LEGISLATION RE BROADCASTING UNDERTAKINGS ON A GRADUAL PHASE-IN BASIS IN ORDER TO AVOID ABRUPT CUT-OFF OF CANADIAN MARKET AND EASE STATIONS' ADJUSTMENT PROBLEMS BY GIVING THEM OPPORTUNITY TO DEVELOP ALTERNATIVE SOURCES OF ADVERTISING SUPPORT IN THEIR U.S. COVERAGE AREAS.

3. PHASING CONCEPT EMBASSY HAS IN MIND WOULD PROVIDE THAT FULL IMPLEMENTATION OF NEW LEGISLATION WOULD NOT BECOME EFFECTIVE FOR A SPECIFIED PERIOD OF TIME AFTER INITIAL PROCLAMATION (E.G. 5 YEARS) AND THAT DURING THIS PERIOD TAX DEDUCTION PRIVILEGES WOULD BE REDUCED IN STEPS. (TWO POSSIBILITIES MIGHT BE: IN FIRST YEAR, 80 PERCENT OF CURRENT YEAR'S ADVERTISING OUTLAYS WOULD BE FULLY DEDUCTIBLE, 60 PERCENT IN SECOND YEAR, ETC.; OR, IN FIRST YEAR, CURRENT YEAR'S OUTLAYS WOULD BE FULLY DEDUCTIBLE UP TO MAXIMUM OF 80 PERCENT OF DEDUCTIBLE EXPENDITURES IN BASE YEAR, UP TO 60 PERCENT OF BASE YEAR IN SECOND YEAR, ETC.) STATIONS WOULD PRESUMABLY WISH TO ANALYZE COMMERCIAL ASPECT OF THESE OR OTHER FORMULAE LIMITED OFFICIAL USE

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PAGE 03 OTTAWA 01510 242311Z

TO DETERMINE WHICH LIKELY TO BE MOST ADVANTAGEOUS TO THEM.

4. BILL WILL PROBABLY BE GIVEN SECOND READING WEEK OF APRIL 28. IT IS NOT PRESENTLY CLEAR WHETHER BILL WILL THEN BE CONSIDERED IN COMMITTEE OF THE WHOLE WHERE NO WITNESSES ARE HEARD OR BY STANDING COMMITTEE ON BROADCASTING, FILMS AND THE ARTS WHICH WOULD HEAR OUTSIDE

WITNESSES. LATTER PROCEDURE HAS BEEN SUGGESTED BY SECRETARY OF STATE FAULKNER BUT MAY NOT BE FORMALLY DECIDED UNTIL SECOND READING. IF BILL GOES TO STANDING COMMITTEE, HEARINGS COULD CONCEIVABLY TAKE PLACE AS EARLY AS WEEK OF MAY 5. U.S. INTERESTS (E.G. TIME, READER'S DIGEST, AND BUFFALO STATIONS) WOULD PROBABLY BE GRANTED PERMISSION TO APPEAR AND U.S. STATIONS COULD USE OPPORTUNITY TO PUT FORWARD IDEAS ON PHASING. ADDITIONALLY, OR ALTERNATIVELY, THEY COULD, OF COURSE, MAKE DIRECT APPROACHES TO APPROPRIATE MINISTERS AND OFFICIALS. IN ANY EVENT DECISIONS MUST BE MADE PROMPTLY IF APPROACHES ARE TO BE EFFECTIVE.

5. EMBASSY'S SUGGESTION HAS ITS ROOTS IN INFORMAL DISCUSSION APRIL 22 BETWEEN TCO AND A DEPARTMENT OF COMMUNICATIONS (DOC) ATTORNEY CONCERNED WITH QUESTION. WHILE DOC ATTORNEY WAS NOT IN POSITION TO GIVE ANY ASSURANCES, HE THOUGHT THAT IDEA OF MITIGATING HARM TO U.S. COMMERCIAL INTERESTS WOULD BE GIVEN SERIOUS ATTENTION IN CONTEXT BROADER U.S.-CANADIAN RELATIONS SO LONG AS PRINCIPLE THAT GOC CAN LEGISLATE IN THIS WAY IS NOT CHALLENGED. AMONG COMMENTS OF INTEREST MADE BY DOC ATTORNEY DURING THIS CONVERSATION ARE THE FOLLOWING: (A) HE REITERATED RABINOVITCH'S VIEW (OTTAWA 1082) OF GOC'S DETERMINATION TO END U.S. STATIONS' PENETRATION OF THE CANADIAN ADVERTISING MARKET AND THAT TAX ACTION WAS CONSIDERED ULTIMATE WEAPON LIKELY TO DO THE JOB. HE ALSO CONFIRMED THAT NO FIRM DATE FOR ENTRY INTO FORCE HAS BEEN YET RECOMMENDED BY OFFICIALS. SECRETARY OF STATE FAULKNER ON JANUARY 23 (OTTAWA 272) INDICATED THIS WOULD OCCUR WHEN THERE WAS "SUFFICIENT ADVERTISING TIME ... AVAILABLE ON CANADIAN STATIONS TO SATISFY CANADIAN NEEDS ADEQUATELY." (RABINOVITCH SUGGESTED TO TCO ON LIMITED OFFICIAL USE

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PAGE 04 OTTAWA 01510 242311Z

MARCH 18 THIS PROBABLY MEANT WHEN THIRD VANCOUVER CHANNEL WENT ON AIR POSSIBLY EARLY IN 1976). (B) REGARDING CONTINUED POOR FINANCIAL POSITION OF ONTARIO'S GLOBAL TV NETWORK AS FACTOR IN SITUATION, HE SAID GLOBAL SITUATION IS PRESENTLY STABLE AT A POOR LEVEL. IT IS NOT REACHING SIGNIFICANT AUDIENCES AND IS DEVOTING INCREASING PERCENTAGE OF PRIME TIME TO OLD MOVIES. IT NEEDS MAJOR SHOT IN ARM TO PRESENT PROGRAMMING WHICH WILL DRAW AUDIENCES AND THUS BE ATTRACTIVE TO ADVERTISERS. WHILE GOC IS CONSCIOUS OF GLOBAL'S NEEDS, HE INDICATED OFFICIALS DO NOT PRESENTLY FEEL IT CAN BE RESCUED THROUGH SUDDEN ENTRY INTO FORCE OF THIS NEW LEGISLATION. (C) IN HIS OPINION, THE BUFFALO STATIONS HAVE AN UNTAPPED MARKET AREA TO THE SOUTH AND WEST BETWEEN BUFFALO AND ERIE (PENNSYLVANIA). SMALLER COMMUNITIES WITH SOME

POTENTIAL HAVE BEEN NEGLECTED BY CONCENTRATION OF EFFORTS ON THE EASIER-TO-MARKET TORONTO AREA. GIVEN SUFFICIENT TIME AND SUSTAINED MARKET EFFORT, HE THOUGHT THE BUFFALO STATIONS COULD DEVELOP ADVERTISING IN THESE AREAS SOMEWHAT EQUIVALENT TO WHAT THEY ARE EARNING IN CANADA NOW. HE HAD NO VIEWS AS TO WHETHER THIS WAS TRUE OF OTHER BORDER STATIONS ALTHOUGH HE DOUBTED ITS RELEVANCE TO KVOS BELLINGHAM GIVEN THE SATURATION OF THE SEATTLE-TAKOMA STATIONS. (TCO RECALLS A CANADIAN TV INTERVIEW WITH BELLINGHAM SPOKESMAN WHO SUGGESTED STATION WOULD CONTINUE OPERATING IN CANADIAN MARKET BY SHAVING RATES TO TAKE ACCOUNT OF NON-DEDUCTIBILITY. RABINOVITCH HAS TOLD TCO HE THINKS THIS POSSIBLE IN VIEW OF VERY SMALL PRODUCTION OUTLAYS INCURRED BY KVOS IN COMPARISON WITH OTHER US AND CANADIAN TV STATIONS . (FCC SHOULD BE ABLE TO EVALUATE THESE POINTS ABOUT THE U.S. MARKET.)

6. EMBASSY WILL TAKE MORE FORMAL SOUNDINGS (INCLUDING WITH LOCAL BUFFALO ATTORNEY) ON ITS SUGGESTED STRATAGEM, IF INSTRUCTED TO DO SO BY THE DEPARTMENT.

7. COMMENT: IN ANY APPROACH TO GOC EMBASSY WOULD EMPHASIZE -- AS WE ARE DOING IN THE CASE OF NATURAL GAS-- THE IMPORTANCE OF AVOIDING SUDDEN DISRUPTION OF ESTABLISHED COMMERCIAL RELATIONSHIPS AND INTERESTS. RIGHTLY OR WRONGLY, THE U.S. STATIONS HAVE COME TO DEPEND ON THE LIMITED OFFICIAL USE

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PAGE 05 OTTAWA 01510 242311Z

CANADIAN MARKET AND ALTHOUGH SOME CANADIAN DISPLEASURE (NOTABLY THAT OF THE CANADIAN RADIO-TELEVISION COMMISSION) HAS BEEN EVIDENT FOR SOME TIME, IT IS ONLY SINCE JANUARY THAT GOC'S INTENTION TO ACT DEFINITELY ON TAX LEGISLATION HAS BEEN CLEAR. THE SITUATION HAS EXISTED FOR SOME YEARS--AT LEAST SINCE EARLY 1960'S. ALLOWING MORE TIME FOR A GRADUCAL APPROACH WOULD NOT DO THE CANADIAN BROADCASTING INDUSTRY ANY REAL HARM AND WOULD HOPEFULLY MINIMIZE ECONOMIC DISRUPTION AND THE POSSIBILITY OF ADVERSE POLITICAL REACTION IN THE U.S. PORTER

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